1 2 3 4 5 6 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE 7 8 DAVID MUNGAI NJENGA, Petitioner, 9 Case No. C11-265-JLR-BAT 10 v. **REPORT AND** RECOMMENDATION NATHALIE ASHER, et al., 11 Respondents. 12 13 14 On March 3, 2011, petitioner, proceeding pro se and in forma pauperis, filed a Petition 15 for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, which challenges the lawfulness of his 16 continued detention pending a stay while the United States Court of Appeals for the Ninth 17 Circuit decides his appeal of the denial of his motion to reopen. Dkt. No. 6. Respondents have 18 appeared in this action which is currently held in abeyance pending issuance of the mandate in 19 *Diouf v. Napolitano*, __ F.3d __, 2011 WL 768077 (9th Cir. March 7, 2011) (holding that aliens 20 who are detained beyond six months and who received a stay while pursuing an appeal of the 21 denial of a motion to reopen are entitled to a bond hearing before an immigration judge at which 22 the government bears the burden of showing that the alien poses a flight risk or a danger to the 23 community).

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On May 3, 2011, however, petitioner filed a motion for voluntary dismissal of his habeas petition. Dkt. No. 22. The Court, having reviewed petitioner's motion for voluntary dismissal, Dkt. No. 14), hereby recommends that this action and all claims asserted herein be dismissed pursuant to Rule 41(a)(2), without prejudice to petitioner filing a new habeas petition and without fees or costs to either party. A proposed order accompanies this Report and Recommendation. DATED this 9th day of May, 2011. BRIAN A. TSUCHIDA United States Magistrate Judge